

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 1023

Introduced by Senator Dunn

February 22, 2005

An act to ~~amend Sections 4062.1, 4600.2, and 4663 of~~ *add Section 5800.1* to the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1023, as amended, Dunn. Workers' compensation.

~~Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law contains provisions relating to formal medical evaluations, pharmacy contracts, and apportionment.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Existing law establishes a workers' compensation system to compensate an employee for injuries sustained in the course of employment. Under this system, the Workers' Compensation Appeals Board has jurisdiction to determine these claims.

If an employee is required to go to the appropriate court to enforce an award of a workers' compensation administrative law judge or the appeals board, this bill would require there to be an additional award of \$2,000 paid to the employee. If the employee is required to go to the appropriate court to enforce any prior order of that court in the same matter, the bill would require there to be an additional award of \$5,000 paid to the employee.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 4062.1 of the Labor Code is amended to~~
2 ~~read:~~

3 ~~SECTION 1. Section 5800.1 is added to the Labor Code , to~~
4 ~~read:~~

5 ~~5800.1. (a) If an employee is required to go to the~~
6 ~~appropriate court to enforce an award of a workers'~~
7 ~~compensation administrative law judge or the appeals board,~~
8 ~~there shall be an additional award of two thousand dollars~~
9 ~~(\$2,000) paid to the employee.~~

10 ~~(b) If the employee is required to go to the appropriate court~~
11 ~~to enforce any prior order of that court in the same matter, there~~
12 ~~shall be an additional award of five thousand dollars (\$5,000)~~
13 ~~paid to the employee.~~

14 ~~(c) All additional awards under this section are cumulative,~~
15 ~~and apply in addition to all other penalties or interest payable~~
16 ~~under any other section of this code or other applicable codes.~~

17 ~~4062.1. (a) If an employee is not represented by an attorney,~~
18 ~~the employer shall not seek agreement with the employee on an~~
19 ~~agreed medical evaluator, nor shall an agreed medical evaluator~~
20 ~~prepare the formal medical evaluation on any issues in dispute.~~

21 ~~(b) If either party requests a medical evaluation pursuant to~~
22 ~~Section 4060, 4061, or 4062, either party may submit the form~~
23 ~~prescribed by the administrative director requesting the medical~~
24 ~~director to request a panel of three qualified medical evaluators~~
25 ~~pursuant to Section 139.2. However, the employer may submit~~
26 ~~the form only if the employee fails to submit the form within 10~~
27 ~~days after the employer has furnished the form and requested the~~
28 ~~employee to submit the form. The party submitting the request~~
29 ~~form shall designate the specialty of the physicians who will be~~
30 ~~assigned to the panel.~~

31 ~~(c) Within 10 days of the issuance of a panel of qualified~~
32 ~~medical evaluators, the employee shall select a physician from~~
33 ~~the panel to prepare a medical evaluation, the employee shall~~
34 ~~schedule the appointment, and the employee shall inform the~~
35 ~~employer of the selection and the appointment. If the employee~~
36 ~~does not inform the employer of the selection within 10 days of~~
37 ~~the assignment of a panel of qualified medical evaluators, then~~
38 ~~the employer may select the physician from the panel to prepare~~

1 a medical evaluation. If the employee informs the employer of
2 the selection within 10 days of the assignment of the panel but
3 has not made the appointment, or if the employer selects the
4 physician pursuant to this subdivision, then the employer shall
5 arrange the appointment. Upon receipt of written notice of the
6 appointment arrangements from the employee, or upon giving the
7 employee notice of an appointment arranged by the employer,
8 the employer shall furnish payment of estimated travel expense.

9 (d) The evaluator shall give the employee, at the appointment,
10 a brief opportunity to ask questions concerning the evaluation
11 process and the evaluator's background. The unrepresented
12 employee shall then participate in the evaluation as requested by
13 the evaluator unless the employee has good cause to discontinue
14 the evaluation. For purposes of this subdivision, "good cause"
15 shall include evidence that the evaluator is biased against the
16 employee because of his or her race, sex, national origin,
17 religion, or sexual preference or evidence that the evaluator has
18 requested the employee to submit to an unnecessary medical
19 examination or procedure. If the unrepresented employee
20 declines to proceed with the evaluation, he or she shall have the
21 right to a new panel of three qualified medical evaluators from
22 which to select one to prepare a comprehensive medical
23 evaluation. If the appeals board subsequently determines that the
24 employee did not have good cause to not proceed with the
25 evaluation, the cost of the evaluation shall be deducted from any
26 award the employee obtains.

27 (e) If an employee has received a comprehensive
28 medical-legal evaluation under this section, and he or she later
29 becomes represented by an attorney, he or she shall not be
30 entitled to an additional evaluation.

31 SEC. 2. Section 4600.2 of the Labor Code is amended to
32 read:

33 4600.2. (a) Notwithstanding Section 4600, when a
34 self-insured employer, group of self-insured employers, insurer
35 of an employer, or group of insurers contracts with a pharmacy,
36 group of pharmacies, or pharmacy benefit network to provide
37 medicines and medical supplies required by this article to injured
38 employees, those injured employees that are subject to the
39 contract shall be provided medicines and medical supplies as
40 prescribed in the contract for as long as these items are

1 reasonably required to cure or relieve the injured employee from
2 the effects of the injury.

3 (b) Nothing in this section shall affect the ability of
4 employee-selected physicians to continue to prescribe and have
5 the employer provide medicines and medical supplies that the
6 physicians deem reasonably required to cure or relieve the
7 injured employee from the effects of the injury.

8 (c) Each contract described in subdivision (a) shall comply
9 with standards adopted by the administrative director. In
10 adopting those standards, the administrative director shall seek to
11 reduce pharmaceutical costs and may consult any relevant studies
12 or practices in other states. The standards shall provide for access
13 to a pharmacy within a reasonable geographic distance from an
14 injured employee's residence.

15 SEC. 3. Section 4663 of the Labor Code is amended to read:

16 4663. (a) Apportionment of permanent disability shall be
17 based on causation.

18 (b) Any physician who prepares a report addressing the issue
19 of permanent disability due to industrial injury shall in that report
20 address the issue of causation.

21 (c) To be considered complete on the issue of permanent
22 disability a physician's report must include an apportionment
23 determination by finding what approximate percentage of the
24 permanent disability was caused by the direct result of injury
25 arising out of and occurring in the course of employment and
26 what approximate percentage was caused by other factors both
27 before and subsequent to the industrial injury, including prior
28 industrial injuries. A physician who is unable to include an
29 apportionment determination in his or her report, shall state the
30 specific reasons why the determination could not be made. The
31 physician shall then consult with other physicians or refer the
32 employee to another physician for treatment or evaluation
33 pursuant to this division in order to make the final determination.

34 (d) An employee who claims an industrial injury shall, upon
35 request, disclose all previous permanent disabilities or physical
36 impairments.